**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. 780 OF 2002**

Ganpat @ Bajirao Gulab Jadhav ]
age 28 years, Occ: Labour Work ]
Residing at Panchshil Nagar, ]
At Post : Tal : Baramati, ]..Appellant
(At present Central Prison ](Ori.Accused)
Yerawada) ]

versus

State of Maharashtra ..Respondents

Mr. Milind Deshmukh for the Appellant - Accused.

Ms. S. Shinde, APP for the Respondents - State.

**CORAM : D. G. DESHPANDE, &**
**R. S. DALVI, JJ.**

**DATE : 17TH JANUARY, 2007.**

**ORAL JUDGMENT : (Per : D. G. Deshpande, J.)**

1. Heard Advocate for the Appellant - Accused and learned APP for the State.

2. This Appeal is filed by the accused challenging his conviction under Section 302 of IPC by the Judgment of 1st Adhoc Additional Sessions

Judge, Baramati, dated 10.7.2002.

3. FIR is recorded upon the statement of the victim Nanda by P.W. 9 Popat Balkrishna Vidhate Police Head Constable. She has stated that she has obtained divorce from her husband and was living alone. Thereafter she developed love with the accused and started living with him. On 5.5.2000 (i.e. the date of the incident) she reported her at about 12.30 noon after purchasing vegetables. Accused was there in the house. He started abusing her as to why she was late and why she did not go to her work. He then poured kerosene on her body from the kerosene stove and set her ablaze. This is the prosecution case. The trial court believed this case and convicted the appellant - accused, and, hence this Appeal.

4. Advocate for the accused strenuously urged that the case as disclosed in the FIR about use of kerosene for setting Nanda ablaze, is totally falsified by the medical evidence. Our attention was drawn by him to the evidence of Dr. Jitendra Manikchand Doshi (P.W. 2) who said that on 5.5.2000 he was on duty as a Medical Officer at Silver

Jubilee Hospital, Baramati. At about 4 p.m. Nanda was referred with burn injuries by one Dhananjaya. She had 80% burns. He prepared certificate and gave it to the police. Nanda was in the hospital for 13 days and she died on 18.5.2000. In the cross-examination doctor admitted that he has recorded history of the case as "Alleged flame burns". He admitted that he did not mention about the smell of kerosene and that the burn injuries were not patchy. According to him patchy injuries occur in case of pouring of kerosene on body. He also admitted that in case of burn injuries due to kerosene there is absence of blister injuries. However, he found blister injuries and he specifically admitted that he could not found injury sustained with the contact of kerosene.

5. Prosecution examined P. W. 1 Gorakhnath Gunaware, Retired from Tahsil Office, Baramati, as a Naib Tahsildar and who was also Executive Magistrate. He stated that on 5.5.2000 at about 4.25 p.m. He got information from the police that Nanda is admitted in the hospital. He therefore visited the hospital to record her dying declaration and also stated that while recording the statement,

Medical Officer was present and he told that she was in a position to give the statement. Doctor therefore gave endorsement and then he recorded the statement. He proved Exhibit 11 i.e. the dying declaration bearing thumb impression of Nanda. In the cross-examination he was confronted with a letter i.e. yadi given by the police wherein it is mentioned by the police that Nanda received burn injuries at the time of cooking. He admitted the contents of the said letter to be true. So far as endorsement is concerned, Advocate for the accused pointed out that the dying declaration is a printed form and medical endorsement is also printed and therefore the same should not be relied. We cannot lay down a law that printed dying declaration cannot be relied. But in any case such a dying declaration becomes suspicious.

6. Prosecution examined Dr. Sambhaji Kokane (P.W. 3), who conducted post mortem on the body of Nanda and proved Exhibit 15. He admitted in the cross-examination that there are no blisters in the case of burn with kerosene. He also admitted that he could not find any symptoms of burn injuries with kerosene. He also admitted that police did not

obtain his certificate about fitness of Nanda to give a statement. There is no such endorsement on the statement recorded by the police that the patient was physically and mentally fit to give statement.

7. Learned APP on the other hand contended that P.W. 4 Anil Sonawane has stated that when he went to see Nanda who had received burn injuries, she told him that accused poured kerosene on her person and set her ablaze and ran away. According to the learned APP, this evidence supports the prosecution case. We are not in agreement with his submission. When medical evidence and the evidence of the doctor clearly show that there were no injuries on the body of Nanda indicating use of kerosene, then story of the prosecution becomes highly doubtful and suspicious.

8. This appears to be the case where the prosecution has not come with whole truth because the C.A. report shows kerosene residue on the clothes of victim. Doctors rule out the possibility of use of kerosene and therefore it is a highly doubtful case.

9. Our attention was drawn by the Advocate for the accused to the evidence of ASI Jadhav (P.W. 10). He has stated that on 5.5.2000 he was on duty in the said police station at about 2.30 p.m. He received telephonic message from ward boy of Silver Jubilee Hospital that one lady by name Nanda was admitted with burn injuries. He accordingly made station dairy entry. He then sent Yadi to the Magistrate Exhibit 34. In this Yadi, ASI Jadhav has written that Nanda caught fire while cooking and when the stove burnt.

10. Accused has given his statement under Section 313 by making written submissions. He admitted that Nanda was living with him since before 4-5 months but she was insisting that he should transfer his house to her name. He was refusing to do so and therefore as a vengeance she has falsely implicated him.

11. After considering all the circumstances, the defence of the accused has to be accepted. The case of the prosecution that accused burnt her with use of kerosene, is not at all supported. That is the

major lacuna, the benefit of which has to be given to the accused. Therefore, order:

**ORDER**

. Appeal is allowed. Conviction and sentence imposed on the appellant - accused is set aside. He is acquitted of the offences. His bail bond stands cancelled.

**(D.G. DESHPANDE, J.)**

**(R. S. DALVI, J.)**